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FM AMEMBASSY SAN SALVADOR
TO SECSTATE WASHDC 5629
BT
C O N F I D E N T I A L

LIMITED OFFICIAL USE SAN SALVADOR 02987

E. O. 12356: NA
TAGS: SHUM, PGOV, ES
SUBJECT: CONGRESSIONAL REQUEST FOR INFORMATION ON THE
JUDICIAL SYSTEM

REF: A) STATE 71377, B) 82 SAN SALVADOR 7399

1. THE FOLLOWING IS OFFERED IN PARTIAL RESPONSE TO
SENATOR SPECTER'S REQUEST FOR INFORMATION ON THE
SALVADORAN JUDICIAL SYSTEM (REF A).

2. AS AMBASSADOR HINTON NOTED IN HIS OCTOBER 29, 1982,
SPEECH TO THE AMERICAN CHAMBER OF COMMERCE, THE
DEGENERATION OF THE JUDICIAL SYSTEM IS BOTH A CAUSE
AND A RESULT OF EL SALVADOR'S CONTINUING CIVIL STRIFE.
IT IS EASY TO NOTE THIS PROBLEM, AND EVEN TO POINT TO
SPECIFIC MANIFESTATIONS. FOR EXAMPLE, ATTEMPTS TO
BRING TO TRIAL INDIVIDUALS ASSOCIATED WITH LEFTIST-
SPONSORED ACTS OF TERRORISM RESULTED IN THE DESTRUCTION
OF THE ATTORNEY GENERAL'S OFFICE IN SAN MIGUEL BY FIRE
BOMB IN 1981, ASSORTED ATTACKS ON PENAL JUDGES IN
SANTA ANA, CHALATENANGO AND SAN SALVADOR IN 1980 AND
1981, AND THE ATTEMPTED ASSASSINATION OF TWO APPEALS
COURT JUDGES IN 1980. ONE ENTIRE FLOOR OF THE SUPREME
COURT WAS DESTROYED BY A BOMB IN LATE 1981; NO DIRECT
MOTIVE WAS DISCOVERED FOR THAT INCIDENT. LIKEWISE,
THE DIFFICULTIES IN BRINGING TO TRIAL INDIVIDUALS
ASSOCIATED WITH THE SECURITY FORCES, ACCUSED OF
MURDERING U.S. CITIZEN LAND REFORM ADVISERS AND
CHURCHWOMEN IN PART, STEM FROM UNWILLINGNESS OF
PROSECUTORS AND JUDGES TO AGGRESSIVELY PURSUE THE
CASES IN THE FACE OF INTIMIDATION OR THE FEAR OF
INTIMIDATION. FROM THESE EXAMPLES, AND OTHERS,
IT HAS BECOME EVIDENT THAT THE JUDICIAL JUSTICE
SYSTEM AS IT IS CURRENTLY STRUCTURED IS UNABLE TO
EFFECTIVELY PROSECUTE CASES INVOLVING POLITICAL
INFLUENCE.

3. IN 1980 THE GOVERNMENT OF EL SALVADOR PROMULGATED
DECREE 507. THIS DECREE ESTABLISHES A SPECIAL
JURIDICAL REGIME FOR THE PROSECUTION OF CRIMES AGAINST
THE STATE AND ASSOCIATED CRIMES. UNDER THE PROVISIONS
OF DECREE 507, MILITARY TRIBUNALS ARE PROCESSING
ABOUT 700 CASES, OF WHICH ABOUT 70 INVOLVE VIOLENT

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CRIMES, PRIMARILY ACTS OF TERRORISM. THE TRIBUNALS AND CASE FILES ARE SECRET, AND THE EMBASSY DOES NOT HAVE SPECIFIC INFORMATION ON THESE CASES.

4. WITH REGARD TO CRIMINAL PROSECUTIONS FOR HOMICIDE, ASSAULT AND BATTERY, THE EMBASSY HAS COLLECTED INFORMATION FROM THE ATTORNEY GENERAL'S OFFICE FROM 1979 THROUGH JUNE 1982 (REF B):

YEAR	1975-80	1980	1981	1982
NO. OF CASES	5678	526	640	189
CONVICTIONS OBTAINED	1047	71	101	35
PERCENTAGE CASES RESULTING IN CONVICTIONS	18.4	13.5	15.8	18.5

5. AT THE PRESENT TIME, THIS IS THE BEST SPECIFIC INFORMATION AVAILABLE. THE RECOVERY OF ACCURATE DATA ON THE SALVADORAN JUSTICE SYSTEM IS PARTICULARLY DIFFICULT, BECAUSE CASES ARE HANDLED SEPARATELY BY OVER 50 PENAL COURTS OF FIRST INSTANCE IN 14 DEPARTMENTS. CENTRALIZED STATISTICS, SUCH AS THOSE INCLUDED IN THE TABLE ABOVE, PROVIDE ONLY THE BAREST FACTS. OF COURSE, BECAUSE MANY INCIDENTS OF VIOLENT CRIME GO ENTIRELY UNREPORTED AND UNPROSECUTED, THOSE REPORTED BY THE COURTS, AND BY OTHER SOURCES SUCH AS THE HUMAN RIGHTS ORGANIZATIONS AND EMBASSY PRESS REPORTS OF VIOLENCE, ALMOST CERTAINLY UNDERESTIMATE THE TOTAL NUMBER OF MURDERS BY AN UNKNOWN DEGREE.

6. DISAPPEARANCES PRESENT A SIMILAR SET OF PROBLEMS. HUMAN RIGHTS ORGANIZATIONS CUSTOMARILY FILE AN "EXHIBITION OF PERSONAL RECOURSE" (ROUGHLY EQUIVALENT TO A WRIT OF HABEAS CORPUS) WITH THE SUPREME COURT, AS PART OF THEIR SEARCH FOR A DISAPPEARED PERSON. AN APPOINTED LEGAL REPRESENTATIVE IS PERMITTED TO INQUIRE AFTER THE WHEREABOUTS OF AN INDIVIDUAL IN GOVERNMENT DETENTION CENTERS ON THE BASIS OF THE WRIT. ACCORDING TO THE SUPREME COURT, ANYWHERE FROM 100 TO 300 EXHIBITIONS ARE OUTSTANDING AT ANY ONE TIME. THE ICRC IS PROBABLY THE BEST SOURCE OF INFORMATION ON CIVILIAN DISAPPEARANCES. ALTHOUGH IT PROTECTS THE

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CONFIDENTIALITY OF SPECIFIC CASES, PUBLICLY THE ICRC REPORTS THAT IT HAS PROCESSED AN AVERAGE OF 150 NEW TRACING INQUIRIES PER MONTH SINCE 1981.

7. GATHERING DATA ON VIOLENT CRIMES AND JUDICIAL SYSTEM IN EL SALVADOR IS COMPLEX AND DIFFICULT. UP UNTIL NOW, THE EMBASSY HAS BEEN UNABLE TO DEDICATE THE EXTENSIVE RESOURCES REQUIRED FOR SUCH A TASK. WE EXPECT TO GAIN A MUCH CLEARER PICTURE OF THE ENTIRE CRIMINAL JUSTICE SYSTEM IN ASSOCIATION WITH A USAID SPONSORED PROJECT TO ASSESS THE NEEDS OF THE SALVADORAN JUDICIAL SYSTEM. THIS PROJECT IS TO GET UNDERWAY DURING THE SECOND WEEK OF APRIL.

8. COMMENT: AS THE REFTTEL CORRECTLY POINTS OUT, MUCH OF WHAT SENATOR SPECTOR WANTS IS SIMPLY NOT AVAILABLE. THE TOTAL NUMBER OF INCIDENTS IS UNKNOWN. PEOPLE ARE OFTEN FOUND DEAD, OBVIOUSLY VICTIMS OF VIOLENCE, AND ALL THAT HAPPENS IN THE LOCAL JUSTICE OF PEACE ORDERS. IMMEDIATE BURIAL. FURTHER, THERE ARE PROBABLY MANY CASES WHERE NO AUTHORITY IS INFORMED. THE VICTIM IS BURIED BY THOSE WHO FIND HIM. ONCE THE TEAM COMING

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HERE TO STUDY THE CRIMINAL JUSTICE SYSTEM SUBMITS
ITS REPORT, WE EXPECT TO HAVE A MUCH BETTER PICTURE.
EVEN THEN, HOWEVER, WE DOUBT THAT THE KIND OF SPECIFIC
INFORMATION SENATOR SPECTOR WANTS WILL BE AVAILABLE.
HINTON
END OF MESSAGE

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